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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/082,109	05/20/98	HAWORTH J	4552678/1980

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EXAMINER
FAULKNER, D

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 05/25/98 <sup>3</sup>

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/082,109

Applicant(s)

Haworth et al

Examiner

Faulkner, D.

Group Art Unit

1617



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-19 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-19 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948 (substitute)

☐ Notice of Informal Patent Application, PTO-152

*D. Faulkner*

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### DETAILED ACTION

1. The examiner acknowledges receipt of the IDS received on 08/24/98.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, ~~12~~ and 14 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for rosemary and sage, does not reasonably provide enablement for any "natural" organic components. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. Applicant can overcome this rejection by deleting the word 'natural' from the claim.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

*Claims 11, 13 and 15 are rejected under 35 U.S.C. 112, second para.*

5. The term "comparable" in claims 11 and 13 is a relative term which renders the claim indefinite. The term "comparable" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The applicant can overcome this rejection by deleting this word.

*Additionally, the expression "readily soluble" in claim 15, renders the claim indefinite for similar reasons. Note the employment of the relative term, "readily."*

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6. Claims 5 and 18<sup>-19</sup> are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Regarding claim 5 the phrase "including" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). The word 'including' follows the words 'selected from the group', this language is usually utilized to demonstrate a closed claim. It is unclear whether the applicant includes the claim to be closed or open. The examiner suggests the following language, 'selected from the group consisting of' be utilized. *Claim 5 is objected to on this basis.*

8. Regarding claims 18<sup>and 19</sup> a composition cannot depend from a method claim. It is unclear whether applicant intends to have the composition, which is a preservative and materially different from the applicants method, incorporate all of the method steps in claim 14.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 1- 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reeves, US patent 5,085,785 in view of Kahleyss et al, (US patent included in IDS).

Reeves teaches the process of purification of organic material, psyllium husk, using fluorinated hydrocarbons such as tetrafluoroethane, see claim 13.

Claim 13 of Reeves differs from applicants claim 1 in that it does not describe the additional solvent blend. It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize additional solvents in the extraction/purification process of the organic material. The motivation is given by Reeves at col. 3 lines 5-8 which describes additional solvent mixtures of carbon tetrachloride and dichloroethane.

Claims 2-15 are included in this rejection when taken in view of Kahleyss.

Kahleyss discloses the extraction of several other organic species, including sage, thyme, oregano and rosemary, (a species of the Labiatae family).

He describes the utilization of organic solvents including acetone and alcohols as conventional solvents known in the art, see col. 1 line 25-30..

It would have been obvious to one of ordinary skill in the art to utilize the components of acetone and alcohol as well as include the organic species used extraction process of Kahleyss in order to produce an improved method of extraction for antioxidant containing plants. The motivation of utilizing Reeves is that he discloses this process of extraction using a polar solvent mixture which is known in the prior art to yield plant extracts with higher antioxidant activities.

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Kahleyss teaches that natural antioxidants are known to be contained in the organic components of rosemary and sage. He teaches that these products are utilized in the food and cosmetics industry, see col. 1 lines 8-18.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine antioxidant activity disclosure, and products shown by Kahleyss in the extraction process of Reeves. The motivation for combining these features of Kahleyss in Reeves, is that both patents address the same problem in the art which is the extraction processes of extraction for organic species, including antioxidant containing extracts.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Faulkner whose telephone number is (703) 305-4043. The examiner can normally be reached on Monday-Friday from 9:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Don Adams, can be reached on (703) 305-4043. The fax phone number for the organization where this application or proceeding is assigned is (703) 703-305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

*D. Faulkner*

*M. Moen*  
PRIMARY EXAMINER  
GROUP 1600